

Brad Newman
District Judge, Department No. 2
Silver Bow County Courthouse
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FILED

JUL 12 2012

By: Lori Maloney, Clerk
S. McGOWAN
Deputy Clerk

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

No. DC-12-50

JEREMY HOSCHEID,

Defendant.

ORDER DEFERRING IMPOSITION OF SENTENCE

This matter came before the Court on July 12, 2012 for purposes of hearing the Defendant's motion for change of plea. The Defendant, JEREMY HOSCHEID, was present and was represented by his counsel, David Vicevich. The State was represented by Special Deputy County Attorney Brett O'Neil of the Montana Insurance Commissioner's Office.

At the outset of the July 12, 2012 hearing, the parties filed a written plea agreement. Pursuant to such agreement, the Defendant advised the Court of his intent to plead guilty to the felony offense with which he was charged in Count I of the State's Information.

The Court advised the Defendant of the offense charged in Count I, the maximum possible penalties, his rights, and the consequences of pleading guilty. The Defendant understood that a

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guilty plea would constitute a waiver of his trial rights, his factual defenses and his right of appeal. The Court determined that the Defendant had discussed his contemplated guilty plea with defense counsel, and that he was satisfied with his attorney's services. The Court determined that the Defendant was competent to enter a plea. The Court also determined that the Defendant's was acting voluntarily, and not as the result of any undue influence or coercion. For these reasons, the Court granted the Defendant's motion to withdraw his previous plea of not guilty to Count I.

The Defendant then pled guilty to the offense of THEFT BY INSURANCE FRAUD, a felony, in violation of Section 45-6-301(6), MCA 2011, as charged in Count I of the State's Information. The Defendant also admitted there was a factual basis for his guilty plea. The Court determined that the Defendant's guilty plea was made knowingly and voluntarily.

The parties waived a presentence investigation. The State indicated that the Defendant had no prior felony record. The parties indicated they were prepared for as sentencing hearing.

The parties did not present witnesses or evidence. The State did not make any argument concerning disposition, but rather relied on the plea agreement. Such agreement provided that a deferred sentence was appropriate in light of the nature of the instant property offense and the Defendant's lack of a prior criminal record. Defense counsel presented argument concerning the Defendant's potential for rehabilitation and his willingness to make restitution to restore the victims to their previous financial position. Defense counsel argued that the Defendant immediately accepted responsibility for his actions when confronted by law enforcement authorities. The Defendant also addressed the Court, apologizing to the victims and expressing his desire to make a positive contribution to the community.

The Court then proceeded to disposition, with the consent of the Defendant and his counsel.

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Based upon the entire record, particularly the parties' negotiated plea agreement,

IT IS THE JUDGMENT OF THIS COURT that the Defendant, JEREMY HOSCHIED, is guilty of the offense of THEFT BY INSURANCE FRAUD, a felony, in violation of Section 45-6-301(6), MCA 2011, as set forth in Count I of the Information filed by the State.

IT IS THE DECISION OF THIS COURT that the Defendant, JEREMY HOSCHIED, is a fit and proper candidate for a deferred imposition of sentence based on the parties' recommendation, the nature of the instant offense and his lack of a prior felony. Accordingly, sentencing in this matter is deferred for a period of three (3) years.

IT IS ORDERED that the Defendant is fined the amount of \$500.00. He shall pay such fine to the Clerk of the Second Judicial District Court.

IT IS FURTHER ORDERED that the Defendant shall pay the following surcharges required by statute: \$10.00 pursuant to Section 3-1-317, MCA; \$50.00 pursuant to Section 46-18-236(1)(b), MCA; and \$50.00 pursuant to Section 46-18-236(1)(c), MCA. Such surcharges (\$110.00 total) shall be paid to the Clerk of the Second Judicial District Court within eighteen (18) months. The Clerk of Court shall distribute the funds according to statute.

IT IS FURTHER ORDERED that during the period of his deferred sentence, the Defendant shall be subject to the following terms and conditions of probation:

1. The Defendant shall submit to the supervision of the Montana Adult Probation Office and obey all of the rules and regulations of such office. The Defendant shall pay supervision fees as required by statute. He shall be subject to any level of supervision deemed necessary and appropriate by his probation officer, including but not limited to the Intensive Supervision Program.
2. The Defendant shall maintain a permanent residence. He shall not change his place of residence without the prior approval of his probation officer. He shall keep the residence

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open and available for his probation officer to inspect, and he shall not deny access to the residence by his probation officer.

3. The Defendant shall not travel outside his assigned supervision district without prior approval of his probation officer.
4. The Defendant shall seek or maintain employment, or a course of vocational or educational training, approved by his probation officer. He shall report any change in employment or training status to his probation officer without unnecessary delay.
5. The Defendant shall personally report to the probation officer as directed, and he shall submit written monthly reports to such officer as required.
6. The Defendant shall not use or possess firearms, ammunition or other deadly weapons, including black powder or explosives, as defined by federal or state law. He shall not use or possess chemical agents such as O.C. spray or pepper spray. The weapons restriction is necessary in the interest of officer safety.
7. The Defendant shall submit to searches of his person, residence, vehicle or workplace, with or without a search warrant, upon the determination of his probation officer of reasonable cause to believe that he has violated a condition(s) of his supervision. The probation officer may authorize a law enforcement officer/agency to conduct such probation searches if the probation officer makes the requisite finding of reasonable cause.
8. The Defendant shall obey all local, state and federal laws.
9. The Defendant shall not use or possess alcoholic beverages, dangerous drugs or drug paraphernalia, with the exception of medication prescribed for his use by a qualified medical professional. He shall submit to chemical analysis of his blood, breath or urine, at the request of his probation officer, to determine compliance with this condition. The Defendant shall notify his probation officer if he has any valid prescriptions and provide any necessary documentation. The Defendant shall not use or possess medical/therapeutic marijuana for any purpose.
10. The Defendant shall not enter or remain in bars or casinos, with the exception of presence for work purposes. The Defendant shall not engage in gambling activities. The prohibition on gambling is necessary in light of the Defendant's substantial restitution obligation.
11. The Defendant shall pay the fines, fees, surcharges and restitution imposed upon him in this case as an express condition of his probation.

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12. The Defendant shall pay restitution in the stipulated amount of \$7,296.83 for the benefit of Farm Bureau Financial Services, Inc. The Defendant shall make regular restitution payments to the Montana Department of Corrections Collections Unit until his restitution obligation is satisfied. The Collections Unit shall disburse such funds to the victim. The Collections Unit also is authorized to require the Defendant to pay a 10% administrative fee (\$730.00) for the management of his restitution account.
13. The Defendant shall not use or possess scanners or other electronic devices suitable for monitoring law enforcement and probation communications.
14. The Defendant shall not associate with parolees, probationers, prison inmates, jail inmates or other persons in the custody of law enforcement authorities without the prior approval of his probation officer. Contacts occurring in employment or group counseling settings approved by the probation office do not constitute violations of this condition.
15. The Defendant shall submit to DNA testing as required by statute.

The Defendant was advised that a violation of the terms and conditions of his deferred sentence would subject him to revocation of probation and to imposition of sentence as provided by law, including the possibility of the maximum penalties prescribed by statute.

The Defendant also was advised that should he successfully complete his probation, he would be afforded the opportunity to return to Court for the purpose of withdrawing his guilty plea and requesting that the charge against him be dismissed.

In deferring sentence, the Court considered the statutory sentencing factors that encourage such disposition in the case of a property crime committed by a first-time offender. The Court also considered the Defendant's lack of a prior criminal history, his employment history, the possibility of rehabilitation, and his ability to pay restitution. The deferred sentence is designed to encourage the Defendant to make a positive contribution to the community. The fine, restitution and

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probation conditions imposed by this Order are intended to hold the Defendant accountable for his conduct.

The Defendant was advised of his right to contest any terms of this written Order that conflict with the Court's oral disposition. Any such challenge shall be made within 120 days of this Order. If the Defendant does not file a timely challenge, his right to do so is deemed waived.

IT IS FURTHER ORDERED that Counts II and III of the Information are dismissed upon motion of the State.

IT IS FURTHER ORDERED that bail, if any, is exonerated.

DATED this 12th day of July, 2012.



Brad Newman
District Judge

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